IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16499 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

RAVJIBHAI B PATEL - Respondent(s)

==========

Appearance :

MR DIPEN A DESAI for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/02/2006

ORAL JUDGMENT

Heard learned advocate Mr. Dipen A. Desai for petitioner and Mr. Brahmbhatt for respondent.

Through this petition under Article 227 of the Constitution of India, petitioner Corporation has

challenged award of Industrial Tribunal, Ahmedabad dated 27.3.2003 in Reference No. 159 of 1998 wherein Industrial Tribunal, Ahmedabad has, while partly allowing reference, set aside order of punishment dated 31.1.1992 made by establishment against second party workman.

2. Petition was admitted by this Court by issuing rule thereon and ad.interim relief in terms of paragraph 6(B) was granted by order dated 28.11.2003.

3. During course of hearing, learned advocate Mr. Desai for petitioner submitted that before the Tribunal, legality and validity of the departmental inquiry was not challenged by workman and that was admitted by workman vide purshis Exh.11 which is apparent from perusal of paragraph 4 and 5 of impugned award. He also submitted that not only inquiry which was admitted by workman but tribunal has come to the conclusion that the finding given by competent authority is also accepted by the Tribunal. Thereafter, Tribunal has committed error in interfering with the punishment and for that, the Tribunal has not given any cogent reason in support of its conclusion, therefore, award of tribunal is contrary to law.

4. As against aforesaid arguments, learned advocate Mr. Brahmbhatt appearing for workman has supported the award made by the Tribunal.

5. I have considered submissions made by the learned advocates for parties. From record, from perusal of impugned award, it is clear that the workman accepted legality, validity and propriety of the inquiry vide Exh. 11 and in paragraph 7, Tribunal has come to the conclusion that the findings given by inquiry officer are also accepted by him and thereafter, Tribunal has decided matter only on the question of punishment. Industrial Tribunal has come to the conclusion that the findings given by inquiry officer that the workman was negligent in driving the vehicle as that finding is proper. Now, only question has been examined by the Tribunal that according to the Inquiry Officer, damage caused to the Bus was Rs.8597.62 and in the charge sheet, damage caused to the bus was estimated about Rs.30,000.00.This being defect kept in mind by the Tribunal, tribunal interfered with the order of punishment imposed by the competent authority. While doing so, tribunal has not considered relevant fact, whether the punishment imposed by the competent authority is unjustified, harsh or

disproportionate to the gravity of misconduct or not. Tribunal has jurisdiction only in case when it is found by the tribunal that the punishment imposed by competent authority is shockingly disproportionate which shocks the conscience of the tribunal. Here in this case, tribunal has not given such finding while examining case of punishment that the punishment in question is harsh, unjustified or shockingly disproportionate. Tribunal has also not recorded finding that it is a case of victimization, unfair labour practice and mala fide on the part of Corporation. In view of these facts, Tribunal has committed gross error in considering the damage caused to the bus, mentioned in the charge sheet, of Rs.30,000.00 and in finding it is recorded as Rs.8597.62 and as per the view of this court, it will not, in any manner, have any effect on the punishment imposed by competent authority since it is not found by the tribunal that the punishment is harsh or disproportionate to the guilt established. Therefore, looking to the misconduct committed by the workman which is found to be proved and accepted by Tribunal, according to the opinion of this court, punishment of stoppage of three annual increments with cumulative effect will be just and proper. Therefore, interference by tribunal is without any cogent

reason and same is also wholly unwarranted in the facts of this case. Therefore, according to my opinion, Tribunal has committed gross error in interfering with the order of punishment dated 31st January, 1992. No doubt, in the body of the award, tribunal has suggested for modification of punishment of stoppage of three increments without cumulative effect but by mistake or through over sight, in the operative portion of the award, no such punishment has been imposed by tribunal while setting aside the order of punishment but only suggested that no arrears is required to be paid by Corporation to workman. This is error on the part of the tribunal while passing impugned award, therefore, considering these glaring facts, according to this Court's opinion, tribunal was clearly in error in interfering with the order of punishment dated 31st January, 1992 which would call for interference of this Court in exercise of powers under Article 227 of the Constitution of India since findings recorded by tribunal are without jurisdiction and, therefore, following order is passed.

This petition is allowed. Award of tribunal dated 27th March, 2003 in Reference No. 159 of 1998 is

hereby set aside. Said reference is ordered to be dismissed. Rule is made absolute accordingly with no order as to costs.

(H.K. Rathod,J.)

Vyas